



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 13, 2010

Mr. John D Lestock  
Assistant City Attorney  
City of Paris  
P.O. Box 9037  
Paris, Texas 75461-9037

OR2010-13832

Dear Mr. Lestock:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 395364.

The Paris Police Department (the "department") received a request for a specified sexual-assault offense report. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information contains documents that have been filed with a court. Court-filed documents are expressly public under section 552.022(a)(17) of the Government Code. Such information must be released unless it is expressly confidential under other law. Section 552.108 of the Government Code is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(17). *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Thus, the court-filed documents at issue, which we have marked, may not be withheld under section 552.108. We also note information that is otherwise confidential under common-law privacy may not be withheld if it is contained in a court-filed document. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (sexual assault victim's privacy right not violated by release of information in public court document). Accordingly, the department may not withhold any information in the court-filed documents under common-law privacy.

We also note section 552.101 of the Government Code is applicable to the remaining information.<sup>1</sup> Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision[.]" and encompasses information protected by other statutes. Some of the documents at issue are medical records, access to which is governed by the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part the following:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). Medical records must be released upon the patient's signed, written consent, provided the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *Id.* §§ 159.004, 159.005. Section 159.002(c) also requires any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the portion of the submitted information that constitutes medical records and that may only be released in accordance with the MPA.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); see e.g., Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

Generally, only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decisions Nos. 393 (1983), 339 (1982); *see also* Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). The requestor knows the identity of the alleged victim in the submitted offense report. Thus, withholding only the identifying information from the requestor would not preserve the victim's common-law right to privacy. The submitted documents, however, indicate the requestor may be the authorized representative of the victim. Section 552.023 of the Government Code provides that a governmental body may not deny access to a person or a person's representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. Gov't Code § 552.023(a). Section 552.108 is not an exception to disclosure that is intended to protect the privacy of any individual; instead, it protects the governmental body's law enforcement interests. *See id.* § 552.108 (section 552.108 intended to protect criminal law enforcement and prosecutorial interests); *see also id.* § 552.023(b) (governmental body may assert provisions of Act or other law that are not intended to protect person's privacy interests to withhold information to which requestor may otherwise have a special right of access). Section 552.023, thus, does not provide a special right of access to information excepted under section 552.108 of the Government Code. Accordingly, if the requestor is not the authorized representative of the victim, then the department must withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. If, however, the requestor is the authorized representative of the victim, then, pursuant to section 552.023 of the Government Code, the information may not be withheld under section 552.101 in conjunction with common-law privacy, and we must address the department's arguments under section 552.108.

The department asserts the remaining information is excepted under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note that the information at issue includes a Miranda warning that was provided to the individual who was arrested. Because this document, which we have marked, has been provided to the arrested individual, we find its release will not interfere with the detection, investigation, or prosecution of crime. You state the remaining information relates to a pending criminal investigation. Based on this representation, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536

S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

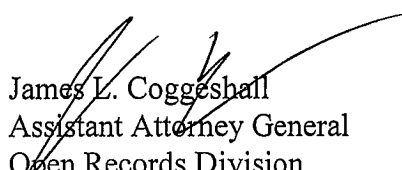
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. Thus, if the requestor is the authorized representative of the victim, then, with the exception of the marked Miranda warning and basic front-page offense and arrest information, the department may withhold the remaining information under section 552.108(a)(1).<sup>2</sup>

In summary, the department must release the information marked under section 552.022 of the Government Code. The marked medical records may only be released in accordance with the MPA. If the requestor is not the authorized representative of the victim, then the department must withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is the authorized representative of the victim, then the department must release the marked Miranda warning and basic information in the remaining documents, but it may withhold the remaining information under section 552.108 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tp

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<sup>2</sup>We note the basic information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

Ref: ID# 395364

Enc. Submitted documents

c: Requestor  
(w/o enclosures)